



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

September 11, 2002

Number: **INFO 2002-0191**
Release Date: 9/30/2002
UIL: 1362.00-00

CC:PSI:B01
GENIN-147012-02

[REDACTED]

Reference: [REDACTED]

Dear [REDACTED]:

This letter is in response to your letter, dated August 6, 2002, seeking relief pursuant to Revenue Procedure 98-55 to file a late S election (Form 2553).

Section 1362(a) of the Internal Revenue Code provides that a small business corporation can elect to be treated as an S corporation. Section 1362(b) of the Code provides guidance on when the S election becomes effective. If an S election is made within the first two and one-half months of a corporation's taxable year, then that corporation will be treated as an S corporation for the year in which the election was made. If the corporation makes an election after the first two and one-half months of a corporation's taxable year, then the corporation will generally not be treated as an S corporation until the following taxable year.

Section 1362(b)(5) of the Code provides that if no election is made pursuant to section 1362(a), or if the election is made after the date prescribed for making such an election, and the Secretary determined reasonable cause existed for the failure to timely make the election, then the Secretary can treat such an election as being timely made for that taxable year and effective as of the first day of that taxable year. The Secretary will grant relief under section 1362(b)(5) only upon receipt and evaluation of a private letter ruling request.

Revenue Procedure 98-55 provides limited automatic relief to a corporation that wishes to make a late S election for which all of the following must be true. First, the corporation has not timely filed a valid S election (Form 2553) under section 1362(a)(1). Second, the corporation in question has filed an S election within twelve (12) months of original due date for the election. Finally, the corporation's due date (excluding extensions) for the tax return for the first year the corporation intended to be an S corporation has not passed. If all of the above criteria are met, then the taxpayer will be allowed to file a later S election form (Form 2553) and the election will be effective from

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the date the corporation first intended to be an S corporation. However, if not all the criteria are met, the only option for the taxpayer is to seek a private letter ruling.

As stated above, in order to receive relief to file a late S corporation election (Form 2553) if the taxpayer does not qualify for automatic relief under a revenue procedure, the taxpayer must submit a valid and complete request for private letter ruling. The procedure for submitting such a request is outlined in Revenue Procedure 2002-01. For your convenience, we have included a copy of the Revenue Procedure with this letter.

Please note that there is a filing fee required, if you decide to seek a private letter ruling (see Appendix A of Rev. Proc. 2002-01, which is tabbed for your convenience). Appendix B provides a sample letter ruling format which should be followed. It contains a complete ruling request with descriptions of what is required. Finally, Appendix C is a required checklist that should be filled out and submitted with your private letter ruling request to ensure its completeness.

We appreciate this opportunity to provide you with assistance. If you have further questions, please contact us at (202) 622-3050 (not a toll free number).

Sincerely,

/s/ David R. Haglund

David R. Haglund
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure (1)

Revenue Procedure 2002-01